

**DEPARTMENT OF STATE REVENUE**  
**LETTER OF FINDINGS NUMBER: 03-0463P**  
**Sales and Use Tax**  
**For the Years 2000-2002**

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**ISSUE**

**I. Tax Administration- Ten Per Cent (10%) Negligence Penalty**

**Authority:** IC 6-8.1-10-2.1, 45 IAC 15-11-2 (b).

The taxpayer protests the imposition of the ten percent (10%) negligence penalty.

**STATEMENT OF FACTS**

The taxpayer operates a restaurant. After an audit, the Indiana Department of Revenue, hereinafter referred to as the "department," assessed additional use tax, interest, and penalty. The taxpayer protested the imposition of the ten percent (10%) negligence penalty. The taxpayer was given ample opportunity to schedule a hearing on the protest and/or submit additional information. Since the taxpayer did neither, this finding is based on the information in the file.

**I. Tax Administration- Ten Percent (10%) Negligence Penalty**

**DISCUSSION**

The taxpayer protests the imposition of the ten percent (10%) negligence penalty pursuant to IC 6-8.1-10-2.1. Indiana Regulation 45 IAC 15-11-2 (b) clarifies the standard for the imposition of the negligence penalty as follows:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to reach and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The taxpayer argued that the failure to pay the proper amount of use tax on certain capital equipment purchases was an error due to the taxpayer's implementation of a new general ledger system that interrupted some of the taxpayer's tax accrual procedures at the corporate office. The taxpayer's carelessness in the accrual of the proper amount of use tax is a breach of the taxpayer's duty that constitutes negligence.

### **FINDING**

The taxpayer's protest is denied.

KMA/JMM/JMS/03/31/12